IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4631 OF 2004

ALONG WITH

CRIMINAL REVISION APPLICATION NO.421 OF 2004

M/s.Raviraj Gears & Anr. ...Applicants

Versus

Usha Ispat Ltd. & Anr. ...Respondents

.....

Mr.Sudhir Hardikar for Applicants.

Mr.K.K.Shroff i/b Shamim & Co. for Respondent No.1.

Mr.A.S.Gadkari, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 30, 2004.

P.C.

1. Heard Counsel for the parties.

2. Criminal Application No.4631 of 2004 is for condonation of delay in filing Revision Application. Delay is about 101 days. The cause

stated in the Application is that the Applicant was unable to attend to the matter, as he was hospitalised. Medical Certificate dated 29th September 2004 is produced to support this position. From the medical certificate, however, it appears that the concerned doctor has certified that the condition of the Applicant was completely improved. Indeed, it says that the Applicant was advised rest up to 25th September 2004. However, there is no mention that the Applicant was advised complete bed rest till 25th September 2004, whereas, the Application proceeds on the assertion that the Applicant was incapable of attending to the matter till 25th September 2004, which stand is unacceptable, as it is not supported by any cogent record. In other words, there is no sufficient cause for condoning the delay in filing of the Revision Application, after lapse of more than 100 days.

3. Be that as it may, assuming that the Applicants had made out sufficient cause for condoning the delay, the Revision Application as filed, is devoid of merits. The Advocates were

heard for admission of the Revision Application forthwith, by consent.

4. After hearing Counsel for the Applicants, to my mind, the attempt of the Applicants is to persuade this Court to re-appreciate the evidence to reach at a finding other than the one recorded by the two Courts below. The finding of facts recorded by the two Courts below will bind this Court.

5. The first argument canvassed before this Court is that the date on which cheque was issued for and on behalf of the partnership firm, the same was not in existence, whereas, it was a proprietary firm. This aspect has been considered by the Courts below and the Appellate Court in Paragraphs 9 to 11 has rejected the same by observing that this case has not been made out by the accused at the trial and no cross-examination in this behalf was led. There is no reason to depart from the conclusion reached by the Courts below on this aspect.

6. The next point canvassed before this Court is that the finding reached by the Courts below that the cheque issued by the Applicants was towards legal dues, is incorrect. It is not possible to accept even this submission. The Courts below have considered the relevant materials on record and on appreciating the same, observed that the cheque issued by the Applicants was towards legal dues. In the circumstances, there is no merit even in this contention.

7. The third contention raised is about the non-service of the statutory notice. Even this aspect has been considered by the Courts below and finding of fact reached about service of the statutory notice. It is not open to this Court to re-appreciate the evidence to take a different view of the matter.

8. The last contention raised before this Court was regarding the complaint as filed, was barred by limitation. Even that aspect has been considered by the Courts below and the Appellate Court on considering the relevant dates, found, as

of fact, that the complaint was filed within limitation, after the compliance of statutory notice. In the circumstances, not a case for exercise in revisional jurisdiction. Dismissed.

9. At this stage, Counsel for the Applicants prays that the Applicants be granted time to surrender. Two weeks time to surrender is granted, as prayed.

A.M.KHANWILKAR, J.